

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAN STOCKWELL,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

CASE NO. C13-5435 RBL-JRC

ORDER GRANTING PETITIONER'S
MOTION TO STAY THIS PETITION
AND HOLD IN ABEYANCE

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the petition pursuant to 28 U.S.C. § 2254.

Petitioner asks the Court to stay this petition and hold it in abeyance so that petitioner can exhaust a claim relating to the validity of a prior conviction that enhanced petitioner's sentence to life without the possibility of parole (ECF No. 3). The Court grants petitioner's motion because the question of the validity of a prior conviction is currently before the Washington State

1 Supreme Court and denial of the motion may mean that petitioner could not raise this claim in
2 federal habeas corpus proceedings.

3 The Kitsap County Court used a 1986 Pierce County conviction in determining that
4 petitioner should be sentenced to life without the possibility of parole (ECF No. 3, p. 2). The
5 validity of the prior conviction is petitioner's only unexhausted claim. Petitioner argued this
6 claim before the Washington State Supreme Court on February 12, 2013 (ECF No. 3, p. 2).

7 Petitioner states that the Washington State Supreme Court decided the direct appeal on
8 his Kitsap County conviction on January 4, 2007 (ECF No. 3, p. 2). On December 24, 2007,
9 petitioner filed two personal restraint petitions, one challenging his Kitsap County conviction
10 and one challenging the validity of his Pierce County conviction (*id.*). The state courts have
11 dismissed the petition challenging the Kitsap County conviction, (ECF No. 3, p.2), however, the
12 validity of the Pierce County conviction is still pending before the Washington State Supreme
13 Court.

14 District courts may use a "stay-and-abeyance" procedure if the court stays a proceeding
15 containing exhausted claims to allow petitioner the chance to exhaust other claims in state court.
16 *Rhines v. Weber*, 544 U.S. 269, 275-77 (2005); *Calderon v. United States District Court*
17 (*Taylor*), 134 F.3d 981, 988 (9th Cir.1998). A district court considers if: (1) petitioner has "good
18 cause" for failure to exhaust the claims in state court; (2) the unexhausted claims are potentially
19 meritorious; and (3) there is no indication that petitioner intentionally engaged in dilatory
20 litigation tactics. *Rhines*, 544 U.S. at 278; *Jackson v. Roe*, 425 F.3d 654, 661 (9th Cir. 2005).

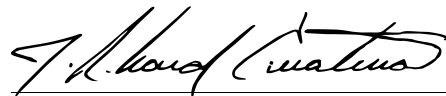
21 The procedural history of this case is unusual. Petitioner filed two personal restraint
22 petitions simultaneously. The Washington State Supreme decided one petition, but the other is
23 still pending. This situation warrants the Court staying this petition until the Washington State
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1 Supreme Court issues a ruling on the validity of petitioner's prior Pierce County conviction.

2 Accordingly, the motion is GRANTED.

3 This petition is stayed and will be held in abeyance until January 17, 2014. Petitioner will
4 inform the Court on or before January 7, 2014, of the status of his personal restraint petition and
5 petitioner may file a motion to extend the stay if no decision has been reached by the
6 Washington State Supreme Court.

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8 Dated this 9th day of July, 2013.

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12 J. Richard Creatura
13 United States Magistrate Judge
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